

to proceed to Municipal Town Hall where Municipal Address was arranged to be presented to Hon'ble the Chief Minister of Mysore, as to occasion annoyance and a breach of peace.

I directed the processionists to disperse peacefully. As they desisted from the directions, he (Sri S. Gopala Gowda) and 26 others were restrained and moved from the spot (Nehru Road) opposite to Post Office—under Section 60, Clause. (3) of Mysore Police Act at about 10 A.M. and released at about 2-30 P.M.”

I might add that communications have also been received from the Deputy Commissioner and the Inspector-General of Police in the same matter.

Report *re* Arrest of Sri Swami Durai.

Mr. SPEAKER.—I have to inform the House that I received a communication from the Special First Class Magistrate, Robertsonpet, dated 27th February 1953, relating to the arrest of Sri P. M. Swami Durai, a Member of this House. The letter is as follows:—

“I write to inform you that the Inspector of Police, Robertsonpet, K.G.F., produced before me in Court today (27th February 1953) Sri P. M. Swami Durai, Member of the Legislative Assembly, from the Kolar Gold Fields Constituency, having arrested him for offences under Sections 143, 147, 324, 326, 336, 337, 149 and 109 I.P.C. with an application that he (the said Sri P. M. Swami Durai) may be remanded to the Judicial custody till 2nd March 1953, to enable the Police to complete the investigation and submit final report, and I have on that application, by my order dated 27th February 1953, remanded him to the Judicial Lock-up, Kolar, till 2nd March 1953. I have herein enclosed the copy of the application for remand and order passed thereon.”

I may add that a communication has also been received from the Deputy Commissioner in the same matter.

MOTION OF PRIVILEGE.

Arrest of Sri Swami Durai.

Mr. SPEAKER.—Sri J. Mohamed Iman has given a written notice of a privilege motion which is as follows:—

“I beg to move that a *prima facie* case of privilege has arisen by the recent arrest of Sri Swami Durai, an honourable member of this august House, depriving him of opportunity to attend this session and of serving his constituency and country and that he may be released forthwith to attend this session.”

Sri Imam, have you got anything to say in the matter?

*Sri J. MOHAMED IMAM (Jagalur).—Sir, this is the first occasion that such a situation has arisen. Therefore, a very heavy responsibility lies on you to establish a tradition. An Hon'ble Member of this House has been prevented from attending this session. That Member represents a big constituency of nearly 80,000 subjects. He was duly served with summons, together with all literature, to attend this House. Unfortunately now, he has been detained and has not been able to attend this House and do his duty by his constituency and by his country. Sir, I am aware that a member of this House, when he is restrained in a criminal process, cannot claim any privilege. If it had been a question of civil proceedings, then, he can claim the privilege. Now the question is—at what stage he can be detained and when he should be detained, or simply because a criminal or a quasi-criminal case is launched against him, can he be prevented from attending this House?

I may at once state that there is no definite law governing the privileges of the members of this House. There are no statutory provisions. In the history

*Asterisk indicates the remarks in speech has not been revised by the member concerned.

(SRI J. MOHAMED IMAM.)

of the English Parliament, the whole thing is built up by tradition. Here we are still in the beginning of democracy and we have to build up our traditions and in this respect we are more or less led and guided by equity, fairplay and justice in the absence of a written law. It is a well-known principle of jurisprudence that a person is presumed or is considered to be innocent till he is convicted by a competent court of law. It is only when he is convicted of an offence that he loses this privilege. Otherwise, if in a criminal court proceedings are launched against any member of this House, whether by Government or private agency, and if that is made the reason for depriving him from serving country, it will be very unfair. According to English law, tradition or custom, till very recently all criminal cases were not treated as depriving a person of his privilege. It was confined only to very grave offences. It was only in such exceptional cases, when a person was accused of very grave and heinous offences, *viz.*, felony, sedition or treason that he was prevented from attending the Parliament. In minor cases, it is doubtful whether a person can be prevented from attending that House. Similarly here, taking equity and the noble maxim that a person is considered quite innocent till he is convicted by a competent court of law into consideration, he must be presumed to be innocent and he must be allowed all the privileges he was enjoying till he was, I say, molested by the Police. So I apply the same theory also to the accredited members of this House. 80,000 people send a person as their representative to this House and by some reason or other—it may be that one day he may find himself clapped in the jail—we cannot say that.....

Sri H. SIDDAVEERAPPA.—With your permission, Sir.

Mr. SPEAKER.—The Hon'ble Member must not go into the merits of the case.

Sri H. SIDDAVEERAPPA.—I was coming to that, Sir.

Sri J. MOHAMED IMAM.—I am not going into the merits of the question. I am going to the question of privilege. What I am saying is that the whole thing must be considered on the ground of equity and fairplay. The law lays down that a person must be presumed to be innocent till he is found guilty and when the law considers him innocent, then he is entitled to all the privileges of an innocent person. That is the first principle on which I say that his privilege has been violated. I am not entering into the merits of the case. I do not say that he participated or that he is guilty. According to the well-known principle of law, unless he is proved guilty he must be considered as an innocent person and he should not be penalised. Not only that; his electorate is deprived of his services and the country is deprived of his services. My friend may say that in a criminal offence nobody can interfere. When a person is accused of criminal offence and when the guilt is fixed on him, then he cannot claim any privilege. But the course of proceedings in a criminal case cannot be a bar to his claiming a privilege. The case now is still in the course of proceedings and the courts have not held him guilty of any criminal offence or violation of any criminal law and so he is entitled to all the privileges of the other members of this House. If simply because a person has been arrested for a criminal offence he is to be deprived of his valuable right, then we will be placing a dangerous weapon in the hands of those who are interested in really doing harm. I give a hypothetical example. Supposing a gentleman does not want my appearance or my attending this House; then it is very easy for him to launch a criminal case against me for forgery or for something else and he will produce me before a Magistrate. The Magistrate in all *bona fides* gives an arrest warrant. In democracy you must be very careful. You should not place a dangerous instrument in the hands of any person or institution. Fairplay and justice must be the consideration. On these grounds, I claim that Sri

Swamidurai is entitled to this privilege and it is a question of equity since he has not been convicted of any offence and since it is in the course of proceedings in a court which may end in conviction or may not end in conviction. Supposing the court in the end pronounces that he is innocent; is there any penalty fixed for the damage or reparation for this damage? This is a question of privilege and either this House or his Constituency should not be deprived of the valuable assistance of a member. This is the first time that it has come before you, Sir, and I am sure you will be guided by equity and that you will lay down a law and tradition which will be an example to the whole of India.

Sri A. G. RAMACHANDRA RAO (Minister for Law and Education).—Sir, the House has heard the communication which the Chair has received from the District Magistrate and has also heard the Hon'ble Member, Sri Mohamed Imam. As stated by the Hon'ble Member, this is the first instance. As stated by the Hon'ble Member even in England.....

Sri Mulka GOVINDA REDDY.—This is the second instance.

Sri A. G. RAMACHANDRA RAO.—This is the first instance where a question of privilege has arisen.

Even in England there is a long tradition of liberty. In all cases where a member of Parliament has been indicted in a criminal court this privilege has been exercised. Here we have not got any precedence to follow. I concede that the right of a member is a very valuable right. I believe this is one of the fit cases which ought to be referred to the Privileges Committee instead of taking on ourselves the responsibility with regard to further steps in the matter. Further, none in this House, nor the Speaker has anything to do with the detention of the member. That I can assure the House.

Sri J. MOHAMED IMAM.—I never said so.

Sri A. G. RAMACHANDRA RAO.—You did not say that. The Magistrate in exercise of his jurisdiction has not

allowed him bail. Supposing he had been allowed bail; he would have attended the session. However, it is better that the Privileges Committee goes into the matter and examines the legal and the constitutional position and also the charges that have been framed against the gentleman, the reasons that have led the Magistrate not to release the person on bail, and reports to this House. I take the responsibility of moving.....

As I indicated in the statement made earlier, concerned authorities have intimated that this Hon'ble Member has been arrested for offences under certain sections of the Indian Penal Code. So far as the privileges of the Members of this House are concerned, it is specifically laid down in the Constitution that the privileges be the same as were enjoyed by the Members of the House of Commons in England on the date the Constitution came into force. It has been decided by a number of Committees of the Privileges of the House of Commons that the privilege of freedom from arrest does not extend to confer immunity from arrest and trial for any offence which is cognizable in the criminal courts. To the same effect, there have been reports of Committees of the Privileges of the House of the People.

However, it may be desirable to refer this case for a definite pronouncement by a Committee of Privileges of this House. I hold that the motion involves a *prima facie* case of privilege. As required by sub-rule (4) of Rule 173, I now call upon the Leader of the House to make the necessary motion for referring this question to the Committee of Privileges.

1-30 P.M.

Sri B. HUTCHE GOWDA (Turuvekere).—What happened after the second? You just now read out that the Hon'ble Member was remanded by the Magistrate up to the second.

Mr. SPEAKER.—The case was posted to the 4th. Then bail was refused and the case is posted for hearing on the 17th of this month.

SRI B. HUTCHE GOWDA.—Bail was refused?

Mr. SPEAKER.—I said that. He was not released on bail.

SRI A. G. RAMACHANDRA RAO.—With deference to the Chair, I beg to move:

“That the matter of privilege referred to in the written motion of Sri J. Mohamed Imam be referred to the Committee of Privileges.”

Mr. SPEAKER.—The question is:

“That the matter of privilege referred to in the written motion of Sri J. Mohamed Imam be referred to the Committee of Privileges.”

The motion was adopted.

ADJOURNMENT MOTIONS.

(1) Postponement of the elections to the Mysore City Municipality.

Mr. SPEAKER.—Sri B. Hutche Gowda and Sri S. Gopala Gowda have given notice of an adjournment motion which is as follows:—

“That this House do now stand adjourned to discuss a definite matter of urgent public importance and of recent occurrence, namely, the situation arising out of the action taken by Government in their Order No. L. 20455—C.M. 28-52-14, dated Bangalore, 20th February 1953, postponing the elections to the City Municipality of Mysore to December 1953 and thereby causing denial of democratic right of the citizens of Mysore City.”

On the same subject, notice of another adjournment motion has been received from Sri J. Mohamed Imam and Sri S. Srinivasa Iyengar, which is as follows:—

“That this House do stand adjourned to raise a debate on a definite matter of urgent public importance and of recent occurrence, namely, the Government

Order dated 20th February 1953, directing the postponement of elections to the City Municipality, Mysore.”

Is the concerned Minister in a position to enlighten the House?

T. CHANNIAH (Minister for public Health and Local Self-Government).—This subject matter has been brought by the Hon'ble Members as a motion of adjournment. As you will see, this subject is not of urgent and public importance and I do not want to go into the merits of the motion; but, at the outset, I want to say that this subject can be very well discussed on various occasions and the Hon'ble House can have opportunities to discuss this matter on an occasion like the motion of thanks for the Rajpramukh's Address the general discussion of the Budget and when cut motions are moved; on these occasions this subject can be very well brought up and the House can discuss it in detail. There is ample opportunity to discuss this matter and I think there is no necessity to bring this subject on this occasion. And I want to bring to the notice of this Hon'ble House that the Government have ordered the postponing of these elections as a matter of normal administrative function and there is nothing extraordinary in this matter. We have done it on several occasions and therefore, I do not think this local matter of one Municipality can be brought and discussed in this Hon'ble House as an adjournment motion. I request the members who have tabled these adjournment motions, to kindly revise their view and see that these adjournment motions are withdrawn. They may take opportunities to discuss this matter on the occasions I have already mentioned.

***Sri J. MOHAMED IMAM** (Jagalur).—Sir, the significance of tabling an adjournment motion is known to every member of this House. The object of tabling an adjournment motion is two-fold: firstly, to censure the Government on a particular action which they have taken and secondly, to concentrate the attention of this House on the particular issue and I am of opinion that, if the